



Purchasing Department

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To: All Prospective Bidders

From: Mary P. Mooney, Purchasing Agent

Date: 10/25/2021

RE: **ADDENDA #3: BID 21-60 ATLANTIC AVENUE ROAD DIET, PHASE 1
FEDERAL PROJECT #STBGP-1100(300) NJDOT JOB #5502329**

You are hereby notified in accordance with the paragraph entitled "Interpretation and Addenda" of the above captioned project that the following has been issued to clarify the meaning of the specifications and the conditions and specifications set forth in said addendum are to be considered as binding as if the same was set forth in the original contract documents.

Question:

This project is Federally Funded with a 11% DBE requirement for the project per the notice to Bidders. However, the bid proposal documents, to be submitted with the bid, do not contain the Standard NJDOT DBE forms, CR 266 / CR 272 / CR 273 to be completed with submission of the bid nor does the checklist provided list these forms as a requirement.

Q: Is there actually a DBE requirement for this bid?

A: The DBE Requirement for the project is 11 %

Q: And if so, are these forms required to be submitted for the project?

A: Please see the attached civil rights advisory notice and referenced forms

THIS ADDENDUM SHALL BE RETURNED WITH BID SUBMITTAL.

Thank you for your cooperation.

ADVISORY NOTICE TO ALL BIDDERS

TOPIC: CIVIL RIGHTS GOAL REQUIREMENTS

Federal - Disadvantaged Business Enterprise (DBE) /

Emerging Small Business Enterprise (ESBE) and

State - Small Business Enterprise (SBE) Goals

The following guidance is provided to help insure your bid is not rejected for being non-responsive and/or not responsible due to State and Federal Civil Rights Goal Requirements.

If the project you will be bidding on has a Federal DBE / ESBE or State SBE Goal, please make note of the following:

- ✓ **DBE/SBE/ESBE Utilization/Participation Plan and ALL Commitment Forms Must Be Submitted by all Bidders within Five (5) days after bid opening.**
- ✓ **Be sure to include ALL required forms and documentation as follows:**
 - **CR-266 "Schedule of DBE/ESBE/SBE Participation"**
 - **CR-273 "Confirmation of DBE/ESBE/SBE Firm"**
 - **CR-272 "DBE/ESBE/SBE Regular Dealer/Supplier Verification" – if applicable**
 - **CR-274 "DBE/ESBE/SBE Trucking Verification" – if applicable**
- ✓ **Make sure that all required forms are PROPERLY, ACCURATELY and FULLY COMPLETED**

Please note that the following, common errors can cause a bid to be rejected:

- Bidder fails to sign the CR-266;
- Bidder fails to submit **COMPLETED** and **SIGNED** CR-273 confirming agreement for each DBE/ESBE/SBE firm listed on the CR-266
- Not verifying and confirming the proper NAICS Code(s) in the NJUCP directory for the classification of work the DBE is certified for, and committed to perform;
- Bidder completes and signs the CR-273 for the DBE/ESBE/SBE subcontractor;
- Failing to identify the correct item numbers, work descriptions and NAICS codes on the CR-266 and CR-273;
- Bidder fails to submit a **COMPLETED** and **SIGNED** CR-272 (Dealer/Supplier Verification) and/or CR-274 (Trucking Verification) from each DBE/ESBE/SBE dealer/supplier or trucker listed on the CR-266 – when applicable;
- Item Numbers and Contract Amounts on CR-266 and CR-273 don't correspond or match;
- DBE/SBE subcontractor listed on the CR-266 is not in good standing (i.e., not currently certified as a DBE or registered as a SBE);
- Identifying SBE subcontractors on the CR-266 for a Federally funded, DBE goal project and vice-versa; and

- Failure to submit adequate documentation to support Good Faith Efforts (GFE) when the DBE/ESBE/SBE goal is not met.

If you have any questions or need clarification concerning the above forms, please contact the Division of Civil Rights/Affirmative Action's Contractor Compliance Unit at 609-963-2047 or by email at DOT-CR.Verifications@dot.nj.gov.

All serious bidders should submit DBE/ESBE/SBE Participation Plan/Commitment Forms. It is in the best interest of the New Jersey Department of Transportation as well as the contracting community.

NOTE: If the apparent low bidder fails to meet the DBE/ESBE/SBE Goal and does not provide adequate documentation of its Good Faith Efforts, the NJDOT may go to the next lowest and responsive and responsible bidder.

**New Jersey Department of Transportation
Confirmation of DBE/ESBE/SBE Firm**

TO BE COMPLETED BY DBE/ESBE/SBE FIRM

Name of DBE/ESBE/SBE Firm: _____
 DBE/ESBE/SBE Firm's Contact Information: _____
 Address: _____
 Phone: _____
 E-mail Address: _____
 NJDOT Project Name: _____

 DP Number (provided by Bidder): _____
 Bidder (Prime): _____
 Proposed Start Date of DBE/ESBE/SBE Firm's Work: _____
 Proposed Dollar Amount of DBE/ESBE/SBE Work if Contract is awarded to Bidder (Prime): _____

 Proposed DBE/ESBE/SBE Work Items, Including Item Descriptions

Please answer each question listed below	Yes	No
If this project is awarded to the Bidder/Prime Contractor listed, do you verify your intent to complete the proposed subcontract work items?	<input type="checkbox"/>	<input type="checkbox"/>
Are all of your employees carried on your firm's payroll?	<input type="checkbox"/>	<input type="checkbox"/>
Is your firm's equipment registered in your name?	<input type="checkbox"/>	<input type="checkbox"/>
If not, is it leased from the Bidder/Prime Contractor or any other contractor on the project?	<input type="checkbox"/>	<input type="checkbox"/>
Will the equipment you use display your firm's name or logo?	<input type="checkbox"/>	<input type="checkbox"/>
Is you Superintendent or Foreman working as an employee of any other contractor or subcontractor on the project?	<input type="checkbox"/>	<input type="checkbox"/>
Are any of your firm's employees also working for the Bidder/Prime Contractor?	<input type="checkbox"/>	<input type="checkbox"/>
For Truckers Only: Will you be responsible for the management and supervision of the entire trucking operation for which you are contracted to perform?	<input type="checkbox"/>	<input type="checkbox"/>
For Suppliers Only: Do you own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies or equipment required under the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business?	<input type="checkbox"/>	<input type="checkbox"/>

Title: _____

Signature of DBE/ESBE/SBE Firm Representative

Date: _____

I certify that the foregoing statements and information made are true. I am aware that if of the foregoing statements made are willingly false, I am subject to punishment. I further certify that I have full power and authority to execute this certification on behalf of the DBE/ESBE/SBE firm, _____ and that all approvals and other actions necessary in connection with the execution of this certification by the above signed have been obtained and are in full force and effect as to the date of execution of this certification.

Under 49 C.F.R. 26.107 dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

NJ Department of Transportation
Division of Civil Rights & Affirmative Action

DBE/ESBE/SBE REGULAR DEALER/SUPPLIER VERIFICATION FORM

(To be completed by DBE/ESBE/SBE firm)

Project Name:	DP Number	
Bidder/Prime Contractor:		
DBE/ESBE/SBE Firm:	Address:	Phone Number

Provide a brief description of the material(s) your firm will be supplying and the Prime is requesting be credited as a regular dealer (include item number and estimate quantities when possible).

If either question is marked "No", the Bidder/Prime Contractor cannot receive regular dealer credit for the services provided by the DBE/ESBE/SBE firm. Instead, the maximum credit that could be received would be the fee or commission the DBE/ESBE/SBE firm receives for its services. Before executing this form, read the "Guide for Counting DBE/ESBE/SBE Suppliers" on page 2 which includes the official question and answer issued by the United States Department of Transportation.

	Check one for each question	
1. Does your firm 'regularly' engage in the purchase and sale or lease, to the general public in the usual course of its business, of product(s) of the general character which will be involved in this contract and for which DBE/ESBE/SBE credit is being sought?	<input type="radio"/> Yes	<input type="radio"/> No
2. Is the role your firm will play on this specific contract be consistent with the regular sale or lease of the product(s) in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?	<input type="radio"/> Yes	<input type="radio"/> No

Authorized Representative of DBE/ESBE/SBE Firm

The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the DBE/ESBE/SBE firm, that the DBE/ESBE/SBE firm 'regularly' engages in the purchase and sale or lease of the items listed herein and is not otherwise a package, broker, manufacturer representative, or other person who arranges or expedites transactions, the the answers and information provided herein are true and correct to the best of her/his knowledge, information and belief and that this verification is made subject to the penalties of 49 CFR Part 26.

Signature	Date
Printed Name	Phone Number

Authorized Representative of Bidder/Prime Contractor

The undersigned individual hereby verifies the he/she is authorized to make this verification on behalf of the Bidder/Prime Contractor, that, to the best of his/her knowledge, information and belief, the DBE/ESBE/SBE firm 'regularly' engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturer representative, or other person who arranges or expedites transactions and that this verification is made subject to the penalties of 49 CFR Part 26.

Under 49 C.F.R. 26.107 dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Signature	Date
Printed Name	Phone Number

GUIDANCE FOR COUNTING DBE/ESBE/SBE REGULAR DEALER/SUPPLIERS

- The official question and answer (q and a) issued by the United States Department of Transportation on December 9, 2011 as institutional guidance relative to regular dealers poses two questions that must both be answered 'yes' in order for the DBE/ESBE/SBE firm to receive regular dealer credit for materials supplied on federally-assisted transportation projects.
- Following is the official q and a in italics:
- *First, does the firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of products of the general character involved in the contract and for which DBE/ESBE/SBE credit is sought?*
 - *Answering this question involves attention to the activities of the business over time, both within and outside the context for the DBE/ESBE/SBE program.*
 - *The distinction to be drawn is between the regular sale or lease of the products in question and merely occasional or ad hoc involvement with them.*
 - *In answering this question, the New Jersey Department of Transportation will not insist that every single item the DBE/ESBE/SBE firm supplies be physically present in the firm's store, warehouse, etc. before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location.*
 - *For example, a mere showroom, the existence of a hard-copy or on-line catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract, are generally not sufficient to demonstrate that a firm regularly deals in the items.*
- *Second, is the role the firm plays on the specific contract in question consistent with the regular sale or lease of the products in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?*
 - *For example, a firm that regularly stocks and sells Product X may, on a particular contract, simply communicate a prime contractor's order for Product Y to the manufacturer, acting in a transaction expediting capacity.*
 - *This means that a firm that acts as a regular dealer on one contract does not necessarily act as a regular dealer on other contracts. For example, a firm that acts as a regular dealer on Contract #1 may act simply as a "transaction expeditor" or "broker" on Contract #2. It would receive DBE/ESBE/SBE credit for 60 percent of the value of the goods supplied on Contract #1 while only receiving DBE/ESBE/SBE credit for its fee or commission on Contract #2.*
 - *In some circumstances, items are "drop-shipped" directly from a manufacturer's facility to a job site, never being in the physical possession of or transported by a supplier. In many such cases, the supplier's role may involve nothing more than contacting the manufacturer and placing a job-specific order for an item that the manufacturer then causes to be transported to the job site.*
 - *In such a situation, the supplier's role may often be better described as that of a "broker" or "transaction expeditor" (see 26.55(e)(2)(ii)(C)) than as a "regular dealer." In such a case, DBE/ESBE/SBE credit is limited to the fee or commission the firm receives for its services. If the firm does not prove any commercially useful function (i.e., it is simply inserted as an extra participant in a transaction, then no DBE/ESBE/SBE credit can be counted.*
- The Department proposes that primes submit the two questions to DBE/ESBE/SBEs in writing. If the DBE/ESBE/SBE firm answers 'yes' to both questions, then the written documentation would be taken into account in the Department's good faith effort determination in accordance with Section 26.53 of the federal DBE/ESBE/SBE regulation set forth in Title 49 Code of Federal Regulations Part 26.
- If it were later determined that the DBE/ESBE/SBE misrepresented itself or erroneously concluded that it was acting as a regular dealer, the Department would strongly consider this documentation in evaluating the actions of the prime and in determining whether the prime exercised reasonable due diligence by obtaining a written regular dealer confirmation from the DBE/ESBE/SBE even though it later turned out to be false.
- Participation would still have to be revised, but the Department will fully consider the written documentation in its good faith effort review.
- The Department reserves the right to address any misrepresentation by the DBE/ESBE/SBE firm or the prime consistent with the "Contract Special Provisions" and other requirements and procedures for determinations of whether a contractor has acted responsibly.

